

AMERICAN ARBITRATION ASSOCIATION

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In the Matter of the Arbitration between:

**FRATERNAL ORDER OF POLICE,
LODGE No. 5**

-AND-

**AWARD
AND OPINION**

CITY OF PHILADELPHIA, PA

Docket No. 14-20-1200-1525
(P/O John Hargraves III [REDACTED] Discharge.)
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BEFORE: ERNEST WEISS, ARBITRATOR

APPEARANCES: For the Union: MARK L. GELMAN, ESQ.
 JENNINGS SIGMOND, P. C.

 For the City: TOY SHIELDS, ESQ.
 CITY SOLICITOR

ISSUE: Was the discharge of P/O John Hargraves III [REDACTED] for
 just cause and if not, what shall be the remedy?

PRELIMINARY STATEMENT

Having been selected in accordance with the provisions of the Collective Bargaining Agreement between the above parties, I conducted an arbitration hearing on September 8, 2014 at the offices of the American Arbitration Association in Philadelphia, PA, at which time the parties were afforded an opportunity to present evidence and argument in support of their respective positions.

BACKGROUND

On April 23, 2012, at approximately 8:00 AM, the Philadelphia police responded to a report of an Assist Officer at the residence of Officer John Hargraves. Upon arrival, the Officers interviewed both him and his wife S [REDACTED] H [REDACTED] who is also a Philadelphia Police Officer.

She stated that their verbal argument became physical. She further described that during their confrontation he pushed her onto the bed straddled her and began choking her with both hands around her throat. She scratched his chest and arms in defending herself.

He stated that as he was leaving the room she grabbed a TV remote control and threw it at him, hitting him in the face. He turned around and punched her in her left eye and face requiring treatment at the local hospital. The hospital also found abnormal markings on her neck. As a result of her injuries, she was out of work for a month.

After an extensive internal investigation Officer John Hargraves was discharged in accordance with the Commissioner's Direct Action.

On or about October 24, 2012 the FOP submitted a grievance claiming that the city is violating numerous provisions of the Collective Bargaining Agreement by Discharging Officer John W. Hargraves III not for

just cause and asked for reinstatement and a make whole remedy for all losses.

CONTENTIONS OF THE CITY

The City pointed out in relevant part that, at the time of the domestic dispute in question herein, his wife was and continues to be employed by the Philadelphia Police Department. Although she was present at the instant arbitration hearing, she elected not to testify.

Commissioner Ramsey testified in relevant part that he took “direct action” in discharging the grievant when he learned about the grievant’s recent domestic violence. He considered a previous incident that resulted in a 30 day discipline also for a domestic confrontation. He pointed out that the grievant as a law enforcer must have the ability respond to domestic incidents. His behavior violates the law whether he is on off the job. Although he was found not guilty by a jury, he was clearly found to have been involved in his own violent domestic confrontation as confirmed by the photos in evidence which were taken several hours after the confrontation and on the following morning at AID.

The Commissioner testified that he also considered the grievant’s prior disciplinary record when he determined to discharge the grievant by the “Commissioner’s Direct Action.”

CONTENTIONS OF THE FOP

The FOP argued in relevant part that when P.O. Hargraves came home on that Saturday morning, April 21, 2012, after being out all night, he

noticed that the deck on their house was being constructed after he insisted in the past that that they can't afford the new construction.

His wife S [REDACTED] H [REDACTED] confronted him and demanded to know where he was all night. The confrontation escalated from there and became physical and violent in the bedroom.

The oldest of their three children, a boy of [REDACTED] at the time, was subpoenaed and testified at the instant arbitration. He stated in part that he was in the house during the confrontation but in a different room. He stated further that, although he was in a different room of the house at the time, he heard the shouting of his parents. He claimed that he heard his father not his mother shouting "get off me" during the loud scuffle in the bedroom.

The FOP also pointed out that P.O. John Hargraves also sustained physical injuries during their confrontation as indicated by the many pictures in evidence herein showing various scratches on his body. Also, as he was leaving the bedroom his wife threw the TV remote control at him, which landed on his face and injured his cheek.

During their heated discussion and violent confrontation, he also informed his wife that he is seeking a divorce.

However, the FOP further pointed out that although the herein confrontation occurred some two years ago, the couple is still married. The children apparently remained with their mother.

In testimony on his own behalf, P.O. John Hargraves stated that he has been helping with domestic chores and maintain the family residents with various chores.

The FOP argued that the City failed to show by a preponderance of the submitted evidence that it acted with just cause. It asks that the grievant be

reinstated with a make whole remedy and for this arbitrator retain jurisdiction with respect to the proper make whole remedy.

DISCUSSION AND OPINION

Most arbitrators recognize that the ultimate disciplinary penalty such as discharge must be analyzed in the context of the particular circumstance and the fact pattern associated with the specific employee or employees involved in the alleged transgression.

As correctly argued before me by the FOP, that in determining whether this most severe economic punishment fits the crime, a number of factors must be considered, including the nature of the transgression and any other condition related to the discipline, as it may impact on the traditional elements of just cause in this particular “para-military” work environment.

In this instance, prior to having concluded that the grievant was properly suspended and then dismissed, I also considered the disparate treatment argument of the FOP as it relates to the sworn testimony of John Hargraves III during the instant arbitration.

I considered the unusual presence and testimony of his now [REDACTED] son. He claimed to have been in another room during the incident, which occurred some two years ago when he was [REDACTED]. His testimony that he heard his father yelling “get off me” was sincere but not convincing, given his father’s presence during his testimony.

However, his son was in a different portion of the house and not a direct witness to the confrontation. His father claimed to have been some 250 lbs. at the time of the incident and could have easily removed her if she was actually on top of him during the confrontation.

Additionally, the pictures in evidence, some taken during the initial investigation very soon after the incident occurred and the next morning, reveal some blows to her face and right eye as well as abnormal marks on her neck, which could have been the result of being choked as she claimed. Those marks were obviously not self-inflicted. But his torn tea shirt, found on the floor, and the scratches on his body, was an indication that she was attempting to protect herself while she was being strangled as depicted in the photos in evidence.

It is noted that Officer Mrs. S [REDACTED] H [REDACTED], his wife, was available at the instant arbitration hearing but she elected not to testify.

Her throwing of the remote controller in his face and the evidence of various scratches on his body, as shown in the pictures herein in evidence, must be regarded as valid, since both were photographed shortly upon arrival of the police, after their off-duty domestic confrontation and the following morning at AID. The difference in size and strength is also obvious as depicted in the many photos in evidence. Given the obvious difference in strength and weigh she would not have been the aggressor.

Therefore, having thoroughly considered all the evidence including the argument and allegations of both parties I have determined, for the above stated reasons, that the discharge of Police Officer John Hargraves III was for just cause as alleged in his notice of dismissal and his grievances are hereby denied.

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.....
AWARD OF ARBITRATOR

The undersigned arbitrator, having been designated in accordance with the Arbitration Agreement entered into by the above parties, and having duly heard the proofs and allegations of the parties, **AWARDS** as follows:

For the above stated reasons, the discharge of Officer John Hargraves III [REDACTED] was for just cause.

The grievance is hereby denied.



ERNEST WEISS, ARBITRATOR

STATE OF NEW JERSEY

COUNTY OF SOMERSET

On this 10th day of November, 2014 before me personally came and appeared Ernest Weiss, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he acknowledged that he executed same.

My Commission Expires May 3, 2015